

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

ROBERT DAVIS)
PLAINTIFF,)
)
VS.)NO. 4-07-CV-00521-BSM
)
UNION PACIFIC RAILROAD)
COMPANY)
DEFENDANT.)

ORAL DEPOSITION OF
CHARLES CUTRER
JANUARY 26, 2009

KELLY D. HILL
7010 RICHWOOD ROAD
LITTLE ROCK, ARKANSAS 72207
(501) 353-2220

KELLY HILL, CCR
501-353-2220

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 2	Page 4
<p>1 ANSWERS AND DEPOSITION OF CHARLES CUTRER, a 2 witness produced at the request of the Plaintiff, 3 was taken by Notice of Deposition, and taken in 4 the above-styled and numbered cause on the 26th 5 day of January, 2009, 2:00 p.m., before Kelly 6 Hill, a Certified Court Reporter, taken at the 7 law offices of Friday, Eldredge & Clark, 400 West 8 Capitol Avenue, Suite 2200, Little Rock, 9 Arkansas, 72201, in accordance with the Federal 10 Rules of Civil Procedure. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 S T I P U L A T I O N S 2 3 The attorneys for all parties present 4 stipulate and agree as follows: 5 6 Objections: 7 Reserve all objections, except as to the form 8 of the questions and the nonresponsiveness of the 9 answers, until the time of trial, which 10 objections are waived if not made at the taking 11 of the deposition. 12 13 Signature: 14 Read & Sign. 15 16 17 18 19 20 21 22 23 24 25</p>
Page 3	Page 5
<p>1 APPEARANCES OF COUNSEL: 2 3 ON BEHALF OF PLAINTIFF: 4 MR. ANDREW S. WILLIAMS (via telephone) 5 SCHLICHTER, BOGARD & DENTON 6 100 S. 4TH STREET, SUITE 900 7 ST. LOUIS, MISSOURI 63102 8 9 ON BEHALF OF DEFENDANT: 10 MR. SCOTT H. TUCKER 11 FRIDAY, ELDREDGE & CLARK 12 400 WEST CAPITOL AVENUE, SUITE 2000 13 LITTLE ROCK, ARKANSAS 72201 14 15 ALSO PRESENT: BRIAN GRIFFITH 16 17 18 19 20 21 22 23 24 25</p>	<p>1 I N D E X 2 3 STYLE AND NUMBER 1 4 APPEARANCES..... 3 5 STIPULATIONS 4 6 DEPOSITION EXHIBIT INDEX 5 7 8 WITNESS: CHARLES CUTRER 9 Examination by Mr. Williams..... 6 10 Deposition Concluded 35 11 Errata Sheet 36 12 COURT REPORTER'S CERTIFICATE 37 13 14 DEPOSITION EXHIBITS 15 No. 1 About AREMA Page 6 16 No. 2 AREMA Committee 1 Page 6 17 Roadway & Ballast 18 19 No. 3 AREMA Chapter 1 Page 6 20 Roadway & Ballast 21 No. 4 U.P. & Burlington Northern Page 6 22 Santa Fe Railroads' Specifications for 23 Main, Branch and Yard Track Ballast 24 No. 5 Ballast Gradation Table Page 6 25 No. 6 Photos of Track Page 6 No. 7 Photos of Rock Page 6</p>

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 6	Page 8
<p>1 PROCEEDINGS</p> <p>2 CHARLES CUTRER,</p> <p>3 having been first duly cautioned and sworn to</p> <p>4 testify the truth, the whole truth and nothing</p> <p>5 but the truth, testified on his oath as follows:</p> <p>6 (Deposition Exhibit Nos. 1 through</p> <p>7 7 were marked.)</p> <p>8 EXAMINATION</p> <p>9 BY MR. WILLIAMS:</p> <p>10 Q. Hi. Could you please state your full name</p> <p>11 for the record?</p> <p>12 A. Charles Lee Cutrer.</p> <p>13 Q. Mr. Cutrer, my name is Andy Williams. I'm an</p> <p>14 attorney. I've been retained by Robert Davis in</p> <p>15 regard to some allegations he has made stating</p> <p>16 he sustained an injury as a result of an incident</p> <p>17 that occurred while he was working for Union</p> <p>18 Pacific. I'm here today to ask you some</p> <p>19 questions in that regard, okay?</p> <p>20 A. Okay.</p> <p>21 Q. Is that your understanding of what's going to</p> <p>22 occur today?</p> <p>23 A. Yes.</p> <p>24 Q. And did you receive notice that you were</p> <p>25 going to have your deposition taken?</p>	<p>1 and I can't see them, okay?</p> <p>2 A. I understand.</p> <p>3 Q. Okay. Did you review any documents in</p> <p>4 preparation for today's deposition?</p> <p>5 A. Some exhibits.</p> <p>6 Q. Pardon me?</p> <p>7 A. No documents, no, sir.</p> <p>8 Q. Okay. Well, you said exhibits. There are</p> <p>9 certain exhibits I forwarded to Mr. Tucker, the</p> <p>10 attorney for Union Pacific, prior to the</p> <p>11 deposition. Have you reviewed those?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. If you could, tell me, sir, what is</p> <p>14 your occupation?</p> <p>15 A. I'm Manager of Track Maintenance.</p> <p>16 Q. And what is the Manager of Track Maintenance</p> <p>17 responsible for?</p> <p>18 A. Supervise the safety of the employees and the</p> <p>19 track.</p> <p>20 Q. Do you have a certain geographic area of</p> <p>21 track that you're responsible for?</p> <p>22 A. North Little Rock area.</p> <p>23 Q. Now, I've heard the title sometimes used as</p> <p>24 roadmaster. Is your job the same as a</p> <p>25 roadmaster, different, or what exactly -- how</p>
Page 7	Page 9
<p>1 A. Yes.</p> <p>2 Q. Have you ever had your deposition taken</p> <p>3 before?</p> <p>4 A. Yes.</p> <p>5 Q. I'm going to go over some of my ground rules</p> <p>6 that may be different than from what some other</p> <p>7 attorneys may have said to you in the past.</p> <p>8 The first and foremost is, I'm going to ask</p> <p>9 you a series of questions. If at any time you</p> <p>10 don't understand my question, would you do me a</p> <p>11 favor and let me know?</p> <p>12 A. All right.</p> <p>13 Q. If you don't say anything, I'm going to</p> <p>14 assume that you gave me a full, fair and honest</p> <p>15 answer, okay?</p> <p>16 A. Okay.</p> <p>17 Q. In addition, you need to make sure that I</p> <p>18 complete my question before you begin to answer,</p> <p>19 that ensures that you understand my question, and</p> <p>20 it also gives the court reporter an opportunity</p> <p>21 to get us both down clearly, okay?</p> <p>22 A. Okay.</p> <p>23 Q. Also, we need to make sure that any of your</p> <p>24 responses are verbal, yeses or noes. Uh-huh,</p> <p>25 huh-uh, shakes, nods, make for a horrible record,</p>	<p>1 would you compare it?</p> <p>2 A. It's the same.</p> <p>3 Q. Okay. And how long have you been the Manager</p> <p>4 of Track Maintenance in the North Little Rock</p> <p>5 area?</p> <p>6 A. About five years.</p> <p>7 Q. Does that include the North Little Rock yard?</p> <p>8 A. Yes.</p> <p>9 Q. Does it -- that job entail other trackage or</p> <p>10 other yards outside of the North Little Rock</p> <p>11 yard?</p> <p>12 A. Yes.</p> <p>13 Q. And what areas outside the North Little Rock</p> <p>14 yard?</p> <p>15 A. I have the mainline from Alexander, Arkansas</p> <p>16 to Jacksonville, Arkansas.</p> <p>17 Q. Any other yards?</p> <p>18 A. I have a yard, Biddle yard.</p> <p>19 Q. Anything other than Biddle?</p> <p>20 A. No, sir. That's about it.</p> <p>21 Q. Okay. Prior to your stint in North Little</p> <p>22 Rock as the Manager of Track Maintenance, how</p> <p>23 were you employed?</p> <p>24 A. I was Manager of Track Maintenance in Fort</p> <p>25 Worth, Texas.</p>

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 10	Page 12
<p>1 Q. And your duties in Fort Worth, Texas, what 2 geographic area did you cover? 3 A. The Fort Worth yard, which at that time was 4 called Centennial yard, the mainline from 5 Arlington, Texas to Fort Worth, and a mainline 6 from Fort Worth, Texas to Chico, Texas, and a 7 mainline from Fort Worth, Texas to Roanoke, 8 Texas. 9 Q. And, you know, barring some slight changing 10 and maybe geographical responsibility, how long 11 were you the Manager of Track Maintenance for 12 that Fort Worth area? 13 A. Four years. 14 Q. And prior to Fort Worth what were you doing? 15 A. I was a track supervisor. 16 Q. What are the duties of a track supervisor? 17 A. Ensure the safety of the employees, and then 18 we went around and did road crossings, installed 19 ties, project work. 20 Q. Did you have a crew that you're responsible 21 for? 22 A. Yes, I did. 23 Q. How many people were on that? 24 A. 22. 25 Q. And do you recall -- I assume going from</p>	<p>1 area? 2 A. Yes. 3 Q. So I'd be correct in assuming you came to 4 North Little Rock sometime about 2004, 2003, 5 somewhere in there? 6 A. End of 2004. 7 Q. Now, the Manager of Track Maintenance, is 8 part of your responsibility selecting the grade 9 of ballast to put in certain locations? 10 MR. TUCKER: Object to the form of 11 the question. The witness can answer it. Go 12 ahead. 13 A. Would you say that again, please? 14 Q. Sure. As Manager of Track Maintenance, is 15 part of your responsibility determining what 16 grade of ballast to place in certain locations? 17 MR. TUCKER: Same objection. You 18 can answer it. 19 A. No. 20 Q. Okay. Well, do you know -- can you tell me 21 who makes that determination? 22 A. It's a standard coming from Omaha. I don't 23 make a decision like that. 24 Q. Okay. If you could, if you look at Exhibit 1 25 that I've had marked for deposition, and I'll</p>
Page 11	Page 13
<p>1 track supervisor to Manager of Track Maintenance 2 is a promotion? 3 A. Yes. 4 Q. Do you recall the date that you received that 5 promotion? 6 A. I'm not sure. It was the year of 2000. I'm 7 not sure of the date. 8 Q. And I apologize, where were you a track 9 supervisor, what geographic location? 10 A. Fort Worth/Dallas area. 11 Q. And how long -- for what period of time 12 number of years were you a track supervisor in 13 the Fort Worth/Dallas area? 14 A. Six years. 15 Q. Prior to you being a track supervisor in Fort 16 Worth/Dallas what was your position? 17 A. Track inspector. 18 Q. And what location were you track inspector? 19 A. Waco to Fort Worth, the Fort Worth/Dallas 20 area. 21 Q. And what number of years were you a track 22 inspector? 23 A. 14. 24 Q. And all the 14 of those years, was that in 25 the same location, the Waco, Fort Worth/Dallas</p>	<p>1 tell you that this is a copy of a web page for a 2 group called A-R-E-M-A. Are you familiar with 3 A-R-E-M-A, or sometimes called AREMA? 4 A. Yes. 5 Q. Are you a member of AREMA? 6 A. Yes. 7 Q. And how long have you been a member of AREMA? 8 A. Maybe three years. I'm not positive. 9 Q. Okay. And how did you -- how is it you 10 became to become a member of AREMA? 11 A. Just signed up for it. 12 Q. Okay. Well, did someone suggest that you 13 become a member, or is it something you were 14 aware of and finally decided, hey, I need to sign 15 up, or how did you go about making that 16 determination? 17 A. A previous boss of mine suggested I join. 18 Q. Do you recall that boss' name? 19 A. Kevin Hicks. 20 Q. And was he a Union Pacific employee? 21 A. Yes. 22 Q. Do you know if he was a member of AREMA? 23 A. Yes, he was. 24 Q. Do you know whether or not there are other 25 people with track maintenance responsibility on</p>

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 14	Page 16
<p>1 the Union Pacific that are members of AREMA?</p> <p>2 A. I don't know for sure.</p> <p>3 Q. If you look at Exhibit No. 2, I'll tell you</p> <p>4 that this is a web page -- or purports to be a</p> <p>5 web page of AREMA talking about a certain</p> <p>6 committee in charge of roadway and ballast. It</p> <p>7 shows the Vice Chair of this particular committee</p> <p>8 is a Perly Schoville. He's an engineer for Union</p> <p>9 Pacific Railroad. Do you know Mr. Schoville?</p> <p>10 A. No, I do not.</p> <p>11 Q. Okay. Do you know what the job of assistant</p> <p>12 engineer entails?</p> <p>13 A. Not really.</p> <p>14 Q. If you go to Exhibit No. 3, I'll purport to</p> <p>15 you that this is a printout of an AREMA web page.</p> <p>16 It talks about the Manual for Railway</p> <p>17 Engineering, Volume 1, Chapter 1, Roadway &</p> <p>18 Ballast. Have you ever seen that document, the</p> <p>19 Manual for Railway Engineering, Volume 1?</p> <p>20 A. No, I have not.</p> <p>21 Q. Would you have access to that particular</p> <p>22 manual as a member of AREMA?</p> <p>23 A. I'm not sure.</p> <p>24 Q. If you could, then go to Exhibit No. 4, which</p> <p>25 is the Union Pacific and Burlington Northern</p>	<p>1 what location, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And that comes from Omaha is what you told</p> <p>4 me, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. It is the table and the information -- Table</p> <p>7 No. 3 and the information under Table No. 3 your</p> <p>8 understanding of what type of ballast is supposed</p> <p>9 to go in what location according to Union Pacific</p> <p>10 from Omaha?</p> <p>11 A. Yes.</p> <p>12 Q. If you go to Exhibit No. 5?</p> <p>13 MR. TUCKER: Hold on just a second,</p> <p>14 Counsel.</p> <p>15 MR. WILLIAMS: Sure.</p> <p>16 MR. TUCKER: We've got some type of</p> <p>17 noise or beeping.</p> <p>18 (Off the record.)</p> <p>19 (Back on the record.)</p> <p>20 Q. (By Mr. Williams) Going to Exhibit No. 5 in</p> <p>21 front of you is another table entitled Ballast</p> <p>22 Gradation Table for Union Pacific Railroad. Do</p> <p>23 you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen this Ballast Gradation</p>
Page 15	Page 17
<p>1 Santa Fe Railroads' Specifications for Main,</p> <p>2 Branch and Yard Track Ballast. Do you see that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Have you ever seen this document before?</p> <p>5 A. I don't think so.</p> <p>6 Q. If you go to the very last page of that</p> <p>7 document, Page 8, the title is Union Pacific &</p> <p>8 Burlington Northern Santa Fe Railroad Companies,</p> <p>9 and it says Table No. 3, Ballast Gradations. Do</p> <p>10 you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever seen this table before?</p> <p>13 A. No.</p> <p>14 Q. There is a note underneath this particular</p> <p>15 table, and it says, Gradation designation Class 1</p> <p>16 is main track ballast material. Gradation</p> <p>17 designation Class 2 is secondary main, branch and</p> <p>18 yard ballast. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And is that your understanding of what</p> <p>21 Union Pacific recommends or requires for ballast</p> <p>22 gradation?</p> <p>23 A. Recommendation, yes, sir.</p> <p>24 Q. And you said earlier that you don't make the</p> <p>25 determination as to what type of ballast goes in</p>	<p>1 Table before?</p> <p>2 A. Yes, I have.</p> <p>3 Q. Okay. Is this something you use to determine</p> <p>4 what grade of ballast goes in certain locations?</p> <p>5 A. No, sir.</p> <p>6 Q. Okay. What do you use this particular table</p> <p>7 for?</p> <p>8 A. I don't use this particular table.</p> <p>9 Q. Okay. Well, you say -- just so I</p> <p>10 understand -- you say you've seen it before,</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And I guess my next question then would be,</p> <p>14 in what capacity or when did you see this table</p> <p>15 in the past?</p> <p>16 A. I don't have a date when I saw it.</p> <p>17 Q. Okay. Do you know in what context, in other</p> <p>18 words, why you would have been reviewing this</p> <p>19 table?</p> <p>20 A. It's in our book of standards.</p> <p>21 Q. Okay. And is that book of standards</p> <p>22 something you use to determine what type of grade</p> <p>23 ballast goes in certain locations?</p> <p>24 A. No, sir.</p> <p>25 Q. Well, what do you use the book of standards</p>

5 (Pages 14 to 17)

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 18	Page 20
<p>1 for?</p> <p>2 A. For other standards like switches or anything</p> <p>3 like that.</p> <p>4 Q. Okay. What tool or what document is it that</p> <p>5 you use to determine what grade of ballast goes</p> <p>6 into certain locations?</p> <p>7 A. It's whatever is it out on the track already.</p> <p>8 Q. So you don't make any determination, you just</p> <p>9 order and place what's already in place?</p> <p>10 A. Yes.</p> <p>11 Q. Or I should say the grade in place, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. When it comes time where it comes to</p> <p>14 your attention that ballast may be needed in a</p> <p>15 certain area, is there a certain provider you use</p> <p>16 to order that ballast from?</p> <p>17 A. I put in an order and they get it -- I don't</p> <p>18 know what vendor they get it from. I just ask</p> <p>19 for ballast and they'll send it.</p> <p>20 Q. And to whom do you place that order?</p> <p>21 A. I do it on the internet.</p> <p>22 Q. And I would imagine you place that order</p> <p>23 internally to someone at Union Pacific or</p> <p>24 someplace else?</p> <p>25 A. Internally to Union Pacific.</p>	<p>1 area. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And underneath that is a legend that talks</p> <p>4 about what each area of shading refers to. Do</p> <p>5 you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It says, Class 1 ballast for main</p> <p>8 track (Old D). Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Then it says Class 2, ballast for secondary</p> <p>11 main, branch and yard track (Old C) Do you see</p> <p>12 that as well?</p> <p>13 A. Yes.</p> <p>14 Q. Is that your understanding of ballast</p> <p>15 requirements of Union Pacific in regard to</p> <p>16 grade -- gradation?</p> <p>17 A. Yes.</p> <p>18 Q. If you could, describe to me in your words</p> <p>19 what is Class 1 ballast?</p> <p>20 A. Class 1 ballast is we call mainline ballast.</p> <p>21 Q. And what are -- what is the general size of</p> <p>22 mainline ballast?</p> <p>23 A. It varies from two inches, two to three</p> <p>24 inches, down to probably an inch-and-a-half.</p> <p>25 Q. Okay. And can you tell me your words what</p>
Page 19	Page 21
<p>1 Q. Do you know what department you make that</p> <p>2 request to?</p> <p>3 A. No, sir, I don't.</p> <p>4 Q. Do you send an e-mail?</p> <p>5 A. We have a requisition system we requisition</p> <p>6 it through.</p> <p>7 Q. Okay. When the ballast that you have</p> <p>8 requested arrives, do you have to send an invoice</p> <p>9 for the ballast that is received?</p> <p>10 A. No, sir.</p> <p>11 Q. Do you know if anyone else does?</p> <p>12 A. I don't know.</p> <p>13 Q. Have you ever been present when ballast you</p> <p>14 order arrived?</p> <p>15 A. Yes.</p> <p>16 Q. Did it arrive by train or by truck?</p> <p>17 A. By train.</p> <p>18 Q. And do you recall what -- whether there was</p> <p>19 any markings on the side of the car that the</p> <p>20 ballast came in or any identification from where</p> <p>21 the ballast came?</p> <p>22 A. No. They're U.P. ballast cars.</p> <p>23 Q. Now, looking at Exhibit No. 5, there is on</p> <p>24 the left-hand side a grid with some various</p> <p>25 different areas with different shade in each</p>	<p>1 Class 2 ballast is?</p> <p>2 A. What they call yard ballast.</p> <p>3 Q. And what size is yard ballast?</p> <p>4 A. I'd say one-and-a-half inches down to</p> <p>5 probably three-quarter of an inch.</p> <p>6 Q. Now, next to the graph is a table. Do you</p> <p>7 see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it has on the left-hand side of that</p> <p>10 table, the left most column, there's various</p> <p>11 titles. AREMA Standard, and it says U.P. Ballast</p> <p>12 Class, then it says Square Opening, and it has a</p> <p>13 number of measurements. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And it appears that the AREMA standard</p> <p>16 then corresponds with what that means to the</p> <p>17 specific U.P. Class; would that be correct; in</p> <p>18 other words, 4A for AREMA is U.P. Class 1?</p> <p>19 A. I wouldn't know that.</p> <p>20 Q. Okay. Well, it's got the next entry down</p> <p>21 says Square Opening. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know what that refers to?</p> <p>24 A. Not really.</p> <p>25 Q. If you go to Exhibit No. 6, which is a</p>

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 22	Page 24
<p>1 variety of pictures -- before I get to No. 6, 2 have you ever gone out and inspected the area or 3 seen the area where Mr. Davis alleges he was 4 injured? 5 A. I've been in the service track area, yes. 6 Q. Now, were you out there for the purpose of 7 looking into Mr. Davis' claim or were you out 8 there as other part of your duties? 9 A. Other part of my duties. 10 Q. Okay. But you have been around the service 11 track in the area that's depicted, correct? 12 A. Yes. 13 Q. And you're familiar with that area? 14 A. Yes. 15 Q. And if you could, by looking at these photos, 16 could you tell me what class of ballast is 17 generally depicted in these pictures as it 18 pertains to the ballast from the rail closest to 19 the pit until the actual edge of the pit? 20 A. Just looking at the photos, no. 21 Q. How would you go about determining what 22 ballast class that is? 23 A. By looking at it in person. 24 Q. Okay. And if you could, tell me what is the 25 difference between looking at the photos in front</p>	<p>1 years in North Little Rock, do you recall ever 2 having to order ballast for this general area 3 near the service track? 4 A. Yes. 5 Q. Do you recall what grade of ballast you 6 ordered? 7 A. Yard ballast. 8 Q. So that would be Class 2? 9 A. Yes. 10 Q. Now, when you order ballast, do you say Class 11 1, Class 2, or do you order it by referring to it 12 as mainline versus yard? 13 A. Well, it used to be Class C ballast. 14 Q. Okay. But how would you go about ordering it 15 in the current time frame? 16 A. Ask for Class 2 ballast. 17 Q. And when you ordered ballast for this 18 particular area near the service track, do you 19 recall if you ordered Class 2 or C? 20 A. I think it was Class C. 21 Q. Now, looking at Exhibit No. 6, I believe you 22 describe Class 2 ballast is varying in size from 23 an inch-and-a-half down to three-quarters of an 24 inch, correct? 25 A. Yes.</p>
Page 23	Page 25
<p>1 of you and being in person that would assist you 2 in making that type of determination? 3 A. Photos sometimes aren't really descriptive. 4 Q. Okay. Well, you've been in that area in 5 person in the past, correct? 6 A. Yes. 7 Q. And the area is within the North Little Rock 8 yard, correct? 9 A. That's correct. 10 Q. So would you agree with me that that should 11 be Class 2 ballast? 12 A. Say that again, please. 13 Q. Well, the area that we're looking at is 14 within the North Little Rock yard, correct? 15 A. Yes, sir. 16 Q. And based upon what we've talked about, that 17 should be Class 2 ballast, should it not, 18 according to Union Pacific's Railroad Ballast 19 Gradation Table? 20 A. Yes. 21 Q. Does that appear to be -- in those 22 photographs in Exhibit No. 6, does that appear to 23 be Grade 2 ballast? 24 A. Appears to be, yes. 25 Q. Do you recall ever having -- in your five</p>	<p>1 Q. In looking at Exhibit No. 6, can you see any 2 pictures that -- or any rocks that appear to be 3 larger than an inch-and-a-half? 4 A. I can't compare to the rocks that are -- I 5 really can't compare them. 6 Q. Okay. And for my next question, if you 7 would, just assume for argument sake, that there 8 were a rock larger than a one-and-a-half, are you 9 aware of any type of percent of rocks that are 10 allowed in Class 2 ballast that are larger than 11 an inch-and-a-half that are still conforming to 12 Class 2 ballast? 13 A. No, sir. No. 14 Q. If there were rocks larger than an 15 inch-and-a-half in this area, could you possibly 16 tell me where those rocks came from? 17 A. No, I really couldn't. 18 Q. You could look at Exhibit No. 7, and I'll 19 tell you that these are purported to be rocks on 20 the location we just looked at in Exhibit No. 6. 21 The first rock I'm looking at only has a ruler on 22 one side of it. Do you see that particular rock? 23 All the other pictures have two rulers? 24 A. Yes, I see it. 25 Q. Okay. And can you -- by looking at this</p>

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 26	Page 28
<p>1 picture, that appears to be a rock that's</p> <p>2 approximately six inches wide; would you agree</p> <p>3 with me?</p> <p>4 A. Approximately.</p> <p>5 Q. Okay. Would this particular rock conform</p> <p>6 with Class 2 ballast?</p> <p>7 A. No.</p> <p>8 Q. The second picture I'm looking at appears to</p> <p>9 be kind of arrowhead looking. You have a white</p> <p>10 ruler on the right and a yellow ruler on the</p> <p>11 bottom. Are you there with me?</p> <p>12 A. Yes, I suppose so.</p> <p>13 Q. Well, let me clarify this. This one appears</p> <p>14 to be -- and you can tell me if I'm wrong -- a</p> <p>15 little under five inches on the white ruler and</p> <p>16 approximately four-and-a-half on the yellow, if</p> <p>17 you account for the fact that it's not lined up</p> <p>18 to the bottom of each ruler. Do you see that?</p> <p>19 Are we looking at the same one?</p> <p>20 A. I have no idea.</p> <p>21 Q. Well, let me ask you this question; why don't</p> <p>22 you look through Exhibit No. 7 and take a look at</p> <p>23 the measurements and the size of the rocks</p> <p>24 depicted. Just take a moment and flip through,</p> <p>25 and tell me when you've done that.</p>	<p>1 A. No.</p> <p>2 Q. Is there any type of routine maintenance done</p> <p>3 on the ballast in the North Little Rock yard,</p> <p>4 such as burning ballast regulators down the</p> <p>5 various tracks?</p> <p>6 A. Yes.</p> <p>7 Q. And now, when I say on a routine basis, other</p> <p>8 than when construction work is done on a track,</p> <p>9 is a ballast regulator ever used in the North</p> <p>10 Little Rock yard?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What is the system you have in place</p> <p>13 for doing that?</p> <p>14 A. I don't understand the question.</p> <p>15 Q. Well, when I say routine maintenance,</p> <p>16 generally, you know, it means once a month, once</p> <p>17 a year, there's some type of system in place to</p> <p>18 do routine maintenance. Do you have that type of</p> <p>19 a system?</p> <p>20 A. Yes.</p> <p>21 Q. And how does the system work?</p> <p>22 A. I still don't understand what you're asking.</p> <p>23 Q. Well, does the ballast regulator run down a</p> <p>24 track once a year on a regular basis, does it run</p> <p>25 down the track once every six months, once every</p>
Page 27	Page 29
<p>1 A. Okay. I've done that.</p> <p>2 Q. Okay. Would any of the rocks depicted</p> <p>3 conform to Class 2 ballast?</p> <p>4 A. No.</p> <p>5 Q. Is there any type of program or any type of</p> <p>6 inspection that goes on in the North Little Rock</p> <p>7 yard whereby track maintenance personnel go</p> <p>8 through walkway areas and see if they can find</p> <p>9 any nonconforming rocks that are not Type -- or</p> <p>10 Class 2 ballast and dispose of them?</p> <p>11 A. No.</p> <p>12 Q. Other than asking people that walk in that</p> <p>13 area, which would be, you know, car men, firemen</p> <p>14 and oilers, is there anyone that goes through</p> <p>15 that area to determine if there's any</p> <p>16 nonconforming ballast in the area to discard of</p> <p>17 it?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Do you know if there's ever been any</p> <p>20 complaints about nonconforming ballast in the</p> <p>21 walkway areas in the North Little Rock yard?</p> <p>22 A. I don't know of any.</p> <p>23 Q. Have you yourself ever seen any nonconforming</p> <p>24 rocks, such as the ones depicted in Exhibit No.</p> <p>25 7, in the walkways at the North Little Rock yard?</p>	<p>1 two years; what system do you have in place?</p> <p>2 A. Whenever the track needs maintaining, that's</p> <p>3 when it's used.</p> <p>4 Q. Okay. So it's not so much of a routine</p> <p>5 regular type of maintenance, it's whenever it's</p> <p>6 requested?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And do you recall any requests for</p> <p>9 people or the managers have asked you to run the</p> <p>10 ballast regulator down tracks in the North Little</p> <p>11 Rock yard?</p> <p>12 A. No.</p> <p>13 Q. So while it's available, it's never been</p> <p>14 done; would that be a fair statement?</p> <p>15 A. No.</p> <p>16 MR. TUCKER: Object to the form of</p> <p>17 the question, but he can answer. He's already</p> <p>18 answered it.</p> <p>19 Q. Well, when you say no, it's never been done</p> <p>20 or -- correct, or are you saying that's a</p> <p>21 misstatement?</p> <p>22 A. That's a misstatement.</p> <p>23 Q. Okay. When has the ballast regulator been</p> <p>24 run down the service track in the North Little</p> <p>25 Rock yard, if you can tell me if that's been</p>

8 (Pages 26 to 29)

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 30	Page 32
<p>1 done?</p> <p>2 A. Sometime in December.</p> <p>3 Q. Of this year?</p> <p>4 A. Of 2008.</p> <p>5 Q. 2008, correct. I'm sorry. I misspoke</p> <p>6 myself. Prior to December of 2008, do you</p> <p>7 remember when it was done prior to that?</p> <p>8 A. I don't have a specific date, no.</p> <p>9 Q. And do you know why in December of 2008 there</p> <p>10 was a ballast regulator run down the service</p> <p>11 track?</p> <p>12 A. We rebuilt a bunch of these tracks and laid</p> <p>13 some switches.</p> <p>14 Q. Do you know why Class 2 ballast is used in</p> <p>15 the yard and in the walkways as opposed to using</p> <p>16 Class 1?</p> <p>17 A. No.</p> <p>18 Q. Have you ever had any conversations with</p> <p>19 anyone in Omaha in that regard?</p> <p>20 A. No, sir.</p> <p>21 Q. Have you ever been given or provided any</p> <p>22 training or information regarding the differences</p> <p>23 in the classes of ballast?</p> <p>24 A. No.</p> <p>25 Q. Now, your duties as Manager of Track</p>	<p>1 A. Yes.</p> <p>2 Q. And what type of obstructions were those?</p> <p>3 A. Tie plates, ties, car doors, wheels.</p> <p>4 Q. And your department did so?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know if any of those obstructions were</p> <p>7 tripping hazards?</p> <p>8 A. Yes, they were.</p> <p>9 Q. Now, you were identified as a potential</p> <p>10 witness regarding the case of Mr. Davis; were you</p> <p>11 aware of that?</p> <p>12 A. For this deposition?</p> <p>13 Q. For deposition for information regarding this</p> <p>14 case?</p> <p>15 A. Yeah.</p> <p>16 Q. Were you aware of that fact?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know anything about how Mr. Davis</p> <p>19 claims he was injured?</p> <p>20 MR. TUCKER: Other than what I told</p> <p>21 him?</p> <p>22 MR. WILLIAMS: Correct.</p> <p>23 Q. Other than what you were told by attorneys</p> <p>24 for Union Pacific, do you have any independent</p> <p>25 knowledge as to how Mr. Davis claims he was</p>
Page 31	Page 33
<p>1 Maintenance, would that also include</p> <p>2 responsibility in regard to any obstructions that</p> <p>3 may occur in the walkways between tracks in the</p> <p>4 North Little Rock yard?</p> <p>5 MR. TUCKER: Object to the form.</p> <p>6 The witness can answer it.</p> <p>7 A. Yes.</p> <p>8 Q. If someone discovers tie butts or scrap or</p> <p>9 dumping in the walkways that need removing, would</p> <p>10 that be something that your department may have</p> <p>11 to take care of?</p> <p>12 A. Yes.</p> <p>13 Q. And you would agree with me that removing</p> <p>14 tripping hazards is important for the safe</p> <p>15 operation of the railroad, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it's one of your responsibilities to make</p> <p>18 sure there are no tripping hazards in those</p> <p>19 areas, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall any time in the last five years</p> <p>22 in the North Little Rock area that your</p> <p>23 department has been called upon or asked to</p> <p>24 remove foreign objects in the walkways between</p> <p>25 any of the tracks in North Little Rock?</p>	<p>1 injured?</p> <p>2 A. No, I do not.</p> <p>3 Q. And I believe you said -- and just so I'm</p> <p>4 clear -- you have done no investigation into his</p> <p>5 particular incident and how it occurred; is that</p> <p>6 correct?</p> <p>7 A. I have not, that's correct.</p> <p>8 Q. Do you know the date that Mr. Davis was</p> <p>9 claiming he was injured?</p> <p>10 A. No, sir, I do not.</p> <p>11 Q. Around about the time of February 13th, 2007,</p> <p>12 do you know if there was any maintenance work or</p> <p>13 any type of construction or reconstruction work</p> <p>14 near the service track in the North Little Rock</p> <p>15 yard?</p> <p>16 A. I know there was some work done, but I don't</p> <p>17 know the dates.</p> <p>18 Q. Now, you said that there was a ballast</p> <p>19 regulator run down the service track in December</p> <p>20 of 2008. Do you recall the last time any work</p> <p>21 was done -- and you said you knew there was --</p> <p>22 was it a year ago, was it in December of 2008</p> <p>23 when the actual work was done to the service</p> <p>24 track?</p> <p>25 A. That's when the major reconstruction or major</p>

CHARLES CUTRER
DAVIS VS. UNION PACIFIC RAILROAD COMPANY

Page 34	Page 36
<p>1 work was done in December '08. 2 Q. Are you aware of any work being done prior to 3 December of 2008 that you can recall a rough time 4 frame? 5 A. I recall work being done, but I don't know 6 the time frame. 7 Q. Do you know if it was in the year 2008? 8 A. I don't think so. 9 Q. Do you remember if it was in 2007? 10 A. There was some switch components -- switch 11 done in 2007. 12 Q. Now, when you say switch components in 2007, 13 could you please describe to me what you mean -- 14 what exact work was being done, if you can 15 recall? 16 A. Putting in switch points and stop rails. 17 Q. And then was there any type of work done to 18 the ballast area around those switches when the 19 components were changed out? 20 A. No. 21 Q. When those switch components are changed, 22 does it involve any type of excavation or 23 digging? 24 A. No. 25 Q. Do you know whether or not the ballast</p>	<p>1 I, CHARLES CUTRER, have read the foregoing 2 deposition and hereby affix my signature that 3 same is true and correct, except as noted herein. 4 CORRECTIONS AND/OR CHANGES AND SIGNATURE 5 PAGE LINE CORRECTION REASON FOR CHANGE 6 7 8 9 10 11 12 13 14 15 16 17 18 CHARLES CUTRER 19 20 STATE OF ARKANSAS) COUNTY OF) 21 SUBSCRIBED AND SWORN to before me by the said CHARLES CUTRER, on this the day of 22 , A.D., 2009. 23 24 25 Notary Public in and for the State of Arkansas My Commission Expires:</p>
Page 35	Page 37
<p>1 gradation used by Union Pacific is used in 2 similar fashion by other railroads? 3 A. I don't know. 4 Q. Have you ever had any conversations with any 5 roadmasters or similar type of employees on other 6 railroads? 7 A. I don't understand your question. 8 Q. In other words, have you ever met or talked 9 to a roadmaster from BN or CFX or IC or -- 10 A. Yes, I have. 11 Q. Have you ever talked to anybody at all in 12 regards to ballast or size of ballast? 13 A. No, I have not. 14 Q. I think that's all I have. 15 MR. TUCKER: We'll reserve ours. 16 Thank you, Mr. Cutrer. 17 (Deposition proceedings 18 concluded at 2:40 p.m.) 19 20 21 22 23 24 25</p>	<p>1 CERTIFICATE 2 STATE OF ARKANSAS) 3) ss: COUNTY OF PULASKI) 4 I, KELLY HILL, Certified Court Reporter, a notary public in and for the aforesaid county and 5 state, do hereby certify that the witness, CHARLES CUTRER, was duly sworn by me prior to the 6 taking of testimony as to the truth of the matters attested to and contained therein; that 7 the testimony of said witness was taken by me stenographically, and was thereafter reduced to 8 typewritten form by me or under my direction and supervision; that the foregoing transcript is a 9 true and accurate record of the testimony given to the best of my understanding and ability. 10 I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the 11 parties to the action in which this proceeding was taken; and, further, that I am not a relative 12 or employee of any attorney or counsel employed by the parties hereto, nor financially 13 interested, or otherwise, in the outcome of this action; and that I have no contract with the 14 parties, attorneys, or persons with an interest in the action that affects or has a substantial 15 tendency to affect impartiality, that requires me to relinquish control of an original deposition 16 transcript or copies of the transcript before it is certified and delivered to the custodial 17 attorney, or that requires me to provide any service not made available to all parties to the 18 action. 19 20 21 Kelly D. Hill 22 Certified Court Reporter State of Arkansas Certification #515 23 24 25</p>